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## **SENATE BILL**

**No. 620**

### **Introduced by Senator Scott**

#### **(Coauthors: Senators Bowen, Ortiz, and Romero)**

(Coauthors: Assembly Members Benoit, Calderon, Chavez, Frommer, Koretz, Laird, Lieber, Lowenthal, Maddox, Mountjoy, Nakano, and Vargas)

February 20, 2003

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An act to amend Sections 787, 1725.5, 10127.10, and 10509.8 of, and to add Sections 789.9, 789.10, 1724, and 1749.8 to, the Insurance Code, relating to insurance.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Scott. Annuities: life insurance: required disclosures and prohibited sales practices.

Existing law imposes a special duty of honesty, good faith, and fair dealing on an insurer, broker, agent, and all others engaged in the

transaction of insurance with a prospective insured who is 65 years of age or older, except for specified types of insurance transactions. Under existing law, the Insurance Commissioner is authorized to assess an administrative penalty for the violation of this duty and other provisions relating to senior insurance. Existing law establishes a 30-day period following the purchase of an individual life insurance policy or an individual annuity contract by a senior citizen, during which time the policy or contract may be canceled and all premiums and fees refunded, and requires certain disclosures in that regard.

Existing law regulates viatical settlements, as defined, and imposes certain requirements on a person entering into or soliciting viatical settlements.

This bill would enact additional restrictions on advertising practices that target senior citizens and would expand the scope of existing restrictions, currently applicable to disability insurance, to life insurance and annuities. The bill would prohibit the sale of annuities to seniors in certain circumstances. The bill would prohibit insurance agents, brokers, and solicitors who are not attorneys from sharing commissions or other compensation with attorneys. The bill would require, effective January 1, 2005, specific training for life agents in order for these producers to sell annuities, unless the agents are nonresident agents who represent a direct response provider, as defined. The bill would limit the investment of premiums during the 30-day cancellation period, except as specified, and would revise the disclosure requirements applicable to the sale of life insurance and annuity products to seniors. The bill would impose restrictions on the sale of life insurance policies and annuities in the home of a senior citizen. The bill would prohibit an agent or insurer from recommending the unnecessary replacement, as defined, of an annuity by a senior citizen. The bill would impose certain duties on the Insurance Commissioner in this regard, and enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 787 of the Insurance Code is amended
- 2 to read:
- 3 787. Any advertisement or other device designed to produce
- 4 leads based on a response from a potential insured which is



1 directed towards persons age 65 or older shall prominently  
2 disclose that an agent may contact the applicant if that is the fact.  
3 In addition, an agent who makes contact with a person as a result  
4 of acquiring that person's name from a lead generating device shall  
5 disclose that fact in the initial contact with the person.

6 (a) No insurer, agent, broker, solicitor, or other person or other  
7 entity shall solicit persons age 65 and older in this state for the  
8 purchase of disability insurance, life insurance, or annuities  
9 through the use of a true or fictitious name which is deceptive or  
10 misleading with regard to the status, character, or proprietary or  
11 representative capacity of the entity or person, or to the true  
12 purpose of the advertisement.

13 (b) For the purposes of this section, an advertisement includes  
14 envelopes, stationery, business cards, or other materials designed  
15 to describe and encourage the purchase of a policy or certificate of  
16 disability insurance, life insurance, or an annuity.

17 (c) Advertisements shall not employ words, letters, initials,  
18 symbols, or other devices which are so similar to those used by  
19 governmental agencies, a nonprofit or charitable institution,  
20 senior organization, or other insurer that they could have the  
21 capacity or tendency to mislead the public. Examples of  
22 misleading materials, include, but are not limited to, those which  
23 imply any of the following:

24 (1) The advertised coverages are somehow provided by or are  
25 endorsed by any governmental agencies, nonprofit or charitable  
26 institution or senior organizations.

27 (2) The advertiser is the same as, is connected with, or is  
28 endorsed by governmental agencies, nonprofit or charitable  
29 institutions or senior organizations.

30 (d) No advertisement may use the name of a state or political  
31 subdivision thereof in a policy name or description.

32 (e) No advertisement may use any name, service mark, slogan,  
33 symbol, or any device in any manner that implies that the insurer,  
34 or the policy or certificate advertised, or that any agency who may  
35 call upon the consumer in response to the advertisement, is  
36 connected with a governmental agency, such as the Social Security  
37 Administration.

38 (f) No advertisement may imply that the reader may lose a  
39 right, or privilege, or benefits under federal, state, or local law if  
40 he or she fails to respond to the advertisement.

(g) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(h) No insurer may use, in the trade name of its insurance policy or certificate, any terminology or words so similar to the name of a governmental agency or governmental program as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

(i) All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer shall have written approval of the insurer before they may be used.

(j) No insurer, agent, broker, or other entity may solicit a particular class by use of advertisements which state or imply that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

(k) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event where insurance products will be offered for sale may use the terms “seminar,” “class,” “informational meeting,” or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words “and insurance sales presentation” immediately following those terms in the same type size and font as those terms.

SEC. 2. Section 789.9 is added to the Insurance Code, to read:  
789.9. (a) In addition to any other reasons that a sale of an individual annuity to a senior may violate any provision of law, an annuity shall not be sold to a senior in any of the following circumstances:

(1) The senior’s purpose in purchasing the annuity is to affect Medi-Cal eligibility and either of the following is true:

(A) The purchaser’s assets are equal to or less than the community spouse resource allowance established annually by the State Department of Health Services pursuant to the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(B) The senior would otherwise qualify for Medi-Cal.

(2) The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and, after the purchase of the annuity, the senior or the senior's spouse would not qualify for Medi-Cal.

(b) In the event that a fixed annuity specified in subdivision (a) is issued to a senior, the issuer shall rescind the contract and refund to the purchaser all premiums, fees, any interest earned under the terms of the contract, and costs paid for the annuity. This remedy shall be in addition to any other remedy that may be available.

SEC. 3. Section 789.10 is added to the Insurance Code, to read:

789.10. (a) This section applies to the sale, offering for sale, or generation of leads for the sale of life insurance, including annuities, to senior insureds or prospective insureds by any person.

(b) Any person who meets with a senior in the senior's home is required to deliver a notice in writing to the senior no less than 24 hours prior to that individual's initial meeting in the senior's home. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in the senior's home the same day, a notice shall be delivered to the senior prior to the meeting. The notice shall be in substantially the following form, with the appropriate information inserted, in 14-point type:

“(1) During this visit or a followup visit, you will be given a sales presentation on the following [indicate all that apply]:

( ) Life insurance, including annuities

( ) Other insurance products [specify]: \_\_\_\_\_.

(2) You have the right to have other persons present at the meeting, including family members, financial advisors or attorneys.

(3) You have the right to end the meeting at any time.

(4) You have the right to contact the Department of Insurance ~~or the Department of Corporations~~ for information, or to file a complaint. [The notice shall include the consumer assistance telephone numbers at ~~those departments~~ *the department*]

(5) The following individuals will be coming to your home: [list all attendees, and insurance license information, if applicable]”

(c) Upon contacting the senior in the senior's home, the person shall, before making any statement other than a greeting, or asking the senior any other questions, state that the purpose of the contact is to talk about insurance, or to gather information for a followup

1 visit to sell insurance, if that is the case, and state all of the  
2 following information:

3 (1) The name and titles of all persons arriving at the senior's  
4 home.

5 (2) The name of the insurer represented by the person, if  
6 known.

7 (d) Each person attending a meeting with a senior shall provide  
8 the senior with a business card or other written identification  
9 stating the person's name, business address, telephone number,  
10 and any insurance license number.

11 (e) The persons attending a meeting with a senior shall end all  
12 discussions and leave the home of the senior immediately after  
13 being asked to leave by the senior.

14 (f) A person may not solicit a sale or order for the sale of an  
15 annuity or life insurance policy at the residence of a senior, in  
16 person or by telephone, by using any plan, scheme, or ruse that  
17 misrepresents the true status or mission of the contact.

18 SEC. 4. Section 1724 is added to the Insurance Code, to read:

19 1724. An agent, broker, or solicitor who is not an active  
20 member of the State Bar of California may not share a commission  
21 or other compensation with an active member of the State Bar of  
22 California. For purposes of this section, "commission or other  
23 compensation" means pecuniary or nonpecuniary compensation  
24 of any kind relating to the sale or renewal of an insurance policy  
25 or certificate or an annuity, including, but not limited to, a bonus,  
26 gift, prize, award, or finder's fee.

27 SEC. 5. Section 1725.5 of the Insurance Code is amended to  
28 read:

29 1725.5. (a) For purposes of Sections 32.5, 1625, 1626,  
30 1724.5, 1758.1, 1765, 1800, 14020, 14021, and 15006, every  
31 licensee shall prominently affix, type, or cause to be printed on  
32 business cards, written price quotations for insurance products,  
33 and print advertisements distributed exclusively in this state for  
34 insurance products its license number in type the same size as any  
35 indicated telephone number, address, or fax number. If the licensee  
36 maintains more than one organization license, one of the  
37 organization license numbers is sufficient for compliance with this  
38 section.

39 (b) Effective January 1, 2005, for purposes of Sections 32.5,  
40 1625, 1626, 1724.5, 1758.1, 1765, 1800, 14020, 14021, and

1 15006, every licensee shall prominently affix, type, or cause to be  
2 printed on business cards, written price quotations for insurance  
3 products, and print advertisements, distributed in this state for  
4 insurance products, the word “Insurance” in type size no smaller  
5 than the largest indicated telephone number.

6 (c) In the case of transactors, or agent and broker licensees, who  
7 are classified for licensing purposes as solicitors, working as  
8 exclusive employees of motor clubs, organizational licensee  
9 numbers shall be used.

10 (d) Any person in violation of this section shall be subject to a  
11 fine levied by the commissioner in the amount of two hundred  
12 dollars (\$200) for the first offense, five hundred dollars (\$500) for  
13 the second offense, and one thousand dollars (\$1,000) for the third  
14 and subsequent offenses. The penalty shall not exceed one  
15 thousand dollars (\$1,000) for any one offense. These fines shall be  
16 deposited into the Insurance Fund.

17 (e) A separate penalty shall not be imposed upon each piece of  
18 printed material that fails to conform to the requirements of this  
19 section.

20 (f) If the commissioner finds that the failure of a licensee to  
21 comply with the provisions of subdivision (a) or (b) is due to  
22 reasonable cause or circumstance beyond the licensee’s control,  
23 and occurred notwithstanding the exercise of ordinary care and in  
24 the absence of willful neglect, the licensee may be relieved of the  
25 penalty in subdivision (d).

26 (g) A licensee seeking to be relieved of the penalty in  
27 subdivision (d) shall file with the department a statement with  
28 supporting documents setting forth the facts upon which the  
29 licensee bases its claims for relief.

30 (h) This section does not apply to any person or entity that is not  
31 currently required to be licensed by the department or that is  
32 exempted from licensure.

33 (i) This section does not apply to general advertisements of  
34 motor clubs that merely list insurance products as one of several  
35 services offered by the motor club, and do not provide any details  
36 of the insurance products.

37 (j) This section does not apply to life insurance policy  
38 illustrations required by Chapter 5.5 (commencing with Section  
39 10509.950) of Part 2 of Division 2 or to life insurance cost indexes



1 required by Chapter 5.6 (commencing with Section 10509.970) of  
2 Part 2 of Division 2.

3 (k) This section shall become operative January 1, 1997.

4 SEC. 6. Section 1749.8 is added to the Insurance Code, to  
5 read:

6 1749.8. (a) Effective January 1, 2005, every life agent who  
7 sells annuities shall satisfactorily complete eight hours of training  
8 prior to soliciting individual consumers in order to sell annuities.

9 (b) Effective January 1, 2005, every life agent who sells  
10 annuities shall satisfactorily complete four hours of training every  
11 two years prior to license renewal. For resident agents, this  
12 requirement shall be part of, and not in addition to, the continuing  
13 education requirements of Section 1749.3.

14 (c) The training required by this section shall be approved by  
15 the commissioner and shall consist of topics related to annuities,  
16 and California law, regulations, and requirements related to  
17 annuities, prohibited sales practices, the recognition of indicators  
18 that a prospective insured may lack the short-term memory or  
19 judgment to knowingly purchase an insurance product, and  
20 fraudulent and unfair trade practices. Subject matter determined  
21 by the commissioner to be primarily intended to promote the sale  
22 or marketing of annuities shall not qualify for credit towards the  
23 training requirement. Any course or seminar that is disapproved  
24 under the provisions of this section shall be presumed invalid for  
25 credit towards the training requirement of this section unless it is  
26 approved in writing by the commissioner.

27 (d) The training requirements set forth in this section shall not  
28 apply to nonresident agents representing an insurer that is a direct  
29 response provider.

30 For the purposes of this section, “direct response provider”  
31 means an insurer that meets each of the following criteria:

32 (1) The insurer does not initiate telephone contact with  
33 insureds or prospective insureds.

34 (2) Agents of the insurer speak with insureds and prospective  
35 insureds only by telephone, and at the request of the insureds or  
36 prospective insureds.

37 (3) Agents of the insurer are assigned to speak with insureds or  
38 prospective insureds on a random basis, when contacted.

39 (4) Agents of the insurer are salaried and do not receive  
40 commissions for sales or referrals.



1 SEC. 7. Section 10127.10 of the Insurance Code is amended  
2 to read:

3 10127.10. (a) Every policy of individual life insurance and  
4 every individual annuity contract that is initially delivered or  
5 issued for delivery to a senior citizen in this state on and after July  
6 1, 2004, shall have printed thereon or attached thereto a notice  
7 stating that, after receipt of the policy by the owner, the policy may  
8 be returned by the owner for cancellation by delivering it or  
9 mailing it to the insurer or agent from whom it was purchased. The  
10 period of time set forth by the insurer for return of the policy by  
11 the insured shall be clearly stated on the notice and this period shall  
12 be not less than 30 days. The insured may return the policy to the  
13 insurer by mail or otherwise at any time during the period specified  
14 in the notice. During the 30-day cancellation period, the premium  
15 for a variable annuity may be invested only in fixed-income  
16 investments and money-market funds, unless the investor  
17 specifically directs that the premium be invested in the mutual  
18 funds underlying the variable annuity contract. Return of the  
19 policy within the 30-day cancellation period shall have one of the  
20 following effects:

21 (1) In the case of individual life insurance policies and variable  
22 annuity contracts for which the owner has not directed that the  
23 premium be invested in the mutual funds underlying the contract  
24 during the cancellation period, return of the policy during the  
25 cancellation period shall have the effect of voiding the policy from  
26 the beginning, and the parties shall be in the same position as if no  
27 policy had been issued. All premiums paid and any policy fee paid  
28 for the policy shall be refunded by the insurer to the owner within  
29 30 days from the date that the insurer is notified that the owner has  
30 canceled the policy. The premium and policy fee shall be refunded  
31 by the insurer to the owner within 30 days from the date that the  
32 insurer is notified that the owner has canceled the policy.

33 (2) In the case of a variable annuity for which the owner has  
34 directed that the premium be invested in the mutual funds  
35 underlying the contract during the 30-day cancellation period,  
36 cancellation shall entitle the owner to a refund of the account  
37 value. The account value shall be refunded by the insurer to the  
38 owner within 30 days from the date that the insurer is notified that  
39 the owner has canceled the contract.

(b) This section applies to all individual policies issued or delivered to senior citizens in this state on or after January 1, 2004. All policies subject to this section which are in effect on January 1, 2003, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

(c) Every individual life insurance policy and every individual annuity contract, other than variable contracts and modified guaranteed contracts, subject to this section, that is delivered or issued for delivery in this state shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

“IMPORTANT

YOU HAVE PURCHASED A LIFE INSURANCE POLICY OR ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.”

The phrase “after 30 days, cancellation may result in a substantial penalty, known as a surrender charge” may be deleted if the policy does not contain those charges or penalties.

(d) Every individual variable annuity contract, variable life insurance contract, or modified guaranteed contract subject to this section, that is delivered or issued for delivery in this state, shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

“IMPORTANT

YOU HAVE PURCHASED A VARIABLE ANNUITY CONTRACT (VARIABLE LIFE INSURANCE CONTRACT, OR MODIFIED GUARANTEED CONTRACT). CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT. DURING THAT 30-DAY PERIOD, YOUR MONEY WILL BE PLACED IN A FIXED ACCOUNT OR MONEY-MARKET FUND, UNLESS YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO UNDERLYING THE CONTRACT DURING THE 30-DAY PERIOD. IF YOU DO NOT DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO, AND IF YOU RETURN THE POLICY WITHIN THE 30-DAY PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE PREMIUM AND POLICY FEES. IF YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO DURING THE 30-DAY PERIOD, AND IF YOU RETURN THE POLICY DURING THAT PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE POLICY’S ACCOUNT VALUE ON THE DAY THE POLICY IS RECEIVED BY THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY, WHICH COULD BE LESS THAN THE PREMIUM YOU PAID FOR THE POLICY. A RETURN OF THE POLICY AFTER 30 DAYS MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE.”

The words “known as a surrender charge” may be deleted if the contract does not contain those charges.

(e) This section does not apply to life insurance policies issued in connection with a credit transaction or issued under a contractual policy-change or conversion privilege provision contained in a policy. Additionally, this section shall not apply to contributory and noncontributory employer group life insurance, contributory and noncontributory employer group annuity contracts, and group term life insurance, with the exception of subdivision (f).

(f) When an insurer, its agent, group master policyowner, or association collects more than one month's premium from a senior citizen at the time of application or at the time of delivery of a group term life insurance policy or certificate, the insurer must provide the senior citizen a prorated refund of the premium if the senior citizen delivers a cancellation request to the insurer during the first 30 days of the policy period.

(g) For purposes of this chapter, a senior citizen means an individual who is 60 years of age or older on the date of purchase of the policy.

SEC. 8. Section 10509.8 of the Insurance Code is amended to read:

10509.8. (a) A violation of this article shall occur if an agent or insurer recommends the replacement or conservation of an existing policy by use of a materially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any, or recommends that an insured 65 years of age or older purchase an unnecessary replacement annuity.

(b) For purposes of this section, "unnecessary replacement" means the sale of an annuity to replace an existing annuity that requires that the insured will pay a surrender charge for the annuity that is being replaced and that does not confer a substantial financial benefit over the life of the policy to the purchaser so that a reasonable person would believe that the purchase is unnecessary.

(c) Patterns of action by policyowners who purchase replacement policies from the same agent after indicating on applications that replacement is not involved, shall constitute a rebuttable presumption of the agent's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall constitute a rebuttable presumption of the agent's intent to violate this article.

(d) This article does not prohibit the use of additional material other than that which is required that is not in violation of this article or any other statute or regulation.